IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5480 of 2000
WITH
SPECIAL CIVIL APPLICATION NO 6168 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PAVANKUMAR RAJMAL JAIN
Versus
STATE OF GUJARAT

Appearance:
MR HR PRAJAPATI for Petitioner
MRS HANSA PUNANI, AGP for Respondent No. 1
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 25/08/2000

ORAL COMMON JUDGEMENT

1. Learned counsel appearing for the petitioner in both these petitions and learned AGP Mrs. Hansa Punani have jointly submitted that both these petitions are

identical in nature and the stand taken by the petitioner qua detention order passed against the detenu in each petition is based on similar legal issues and so both these petitions can be heard together and disposed of by the common judgment. Under the circumstances, both these petitions are heard together and are disposed of by this common judgment.

2. Affidavits filed by learned counsel for the Union of India and learned AGP for State of Gujarat are taken on record. Petitioners are detenues and they are in detention under the order passed by the District Magistrate, Ahmedabad in exercise of the powers conferred on him under sub-sec.(2) of sec.3 of Prevention of Black Marketing And Maintenance of Supplies of Essential Commodities Act, 1980. Detaining Authority, while passing the order of detention, has observed that both these petitioners are prosecuted in respect of a criminal complaint lodged in a police station for dealing in petroleum products known as Solvent and their activities are creating obstruction in regulating the supply of essential commodities. Detaining authority has also held that as the criminal courts have granted bail to the petitioners in the respective criminal cases registered against them, they are likely to indulge in similar types of activities and they will commit same type of offences qua solvent.

3. The petitioners have challenged the orders of detention on various grounds, but while arguing the matter, learned counsel appearing for the petitioners has confined his arguments only on one point and agitated legal issue that the petitioners are not supplied with all the documents referred to and relied upon by the detaining authority while recording the subjective satisfaction as to the detention of the petitioners. It is pointed out by referring to relevant part of the orders of detention wherein the detaining authority has stated specifically that the orders of detention are passed as they are released on bail by the competent court in connection with the offences registered against them in the police station. The petitioners are allegedly found involved in the offences punishable under section 3 R/w sec.7 of the Essential Commodities Act,1955 and on the strength of the FIR lodged in Amraiwadi Police Station, Police has registered offence as CR No. II 3047/2000. It is argued that the competent authority has recorded finding against the petitioners only on the ground that the authority apprehends that the petitioners will indulge in similar types of activities as they are released on bail. It can be legitimately argued by the

petitioners that had the application for bail preferred by the petitioners not been granted, the detaining authority would not have passed the orders of detentions against the petitioners. It is argued that the FIR, application for bail preferred by the petitioners, order of the competent authority granting bail to the petitioners are the basic documents which are required to be supplied to the petitioners which in the instant case, are not supplied and, therefore, the impugned orders of detention are unjust, illegal,improper and require to be quashed and set aside.

4. It is not a matter of dispute that these documents are not supplied to the petitioners. It is argued by learned AGP Mrs. Punani that the detaining authority has casually referred these documents and decision is not recorded on the strength of these documents. She has submitted that failure to furnish copies of the documents in respect of which only reference; casual or passing reference; is made in the grounds of detention, should not be treated as infringement of Article 22(5) of the Constitution of India and this irregularity is not fatal. In response to this submission, learned counsel appearing for the petitioners have cited one decision of this Court in the case of Koli Sureshbhai Balabhai Parmar v/s District Magistrate, Bhavnagar & Others, reported in 2000(2) GLH 540. This Court (Coram : M.R. Calla, J), while dealing with the similar facts, has taken into consideration the decision of the Apex Court in the case of M. Ahmedkutty v/s Union of India, reported in (1990)2 SCC P.1, and has referred relevant part of the judgment of the Apex Court in para-12, wherein it has been observed and held that order of bail in such cases is a basic document and non-supply of such document is a direct infringement of the right of the petitioner conferred under Article 22(5) of the Constitution of India. This Court has held that the copy of the bail order is a vital document. Thus, it is settled legal position that reference of bail order or registration of criminal case cannot be said to be a casual reference and copies of such vital and important documents are required to be supplied to the detenues and non-supply thereof results violation of the right of a detenu to make effective representation conferred under Article 22(5) of the Constituion of India. In the case on hand, it is not a matter of dispute that such documents are not supplied to the petitioners-detenues and, therefore, it amounts to violation of Article 22(5) of the Constitution of India. Consequently, the impugned orders of detention require to be quashed and set aside.

5. Ms. Davawala, learned counsel appearing for respondent no.4 Union of India has nothing to add as the grievances raised by the petitioners in these petitions are mainly against the State of Gujarat and Detaining Authority.

6. For the reasons stated above, both these petitions are allowed. Impugned order of detention dated 23.5.2000 passed by the learned District Magistrate, Ahmedabad against the petitioner-detenu Shri Pavankumar Rajmal Jain of Spl.C.A. No. 5480/2000 is hereby quashed and set aside. Rule is made absolute. No costs. Detenu Shri Pavankumar Rajmal Jain be set at liberty forthwith if not required to be detained in any other case.

The impugned order of detention dated 23.5.2000 passed by the learned District Magistrate, Ahmedabad against the petitioner-detenu Shri Pareshkumar Ramniklal Doshi of Spl.C.a. No. 6168/2000 is hereby quashed and set aside. Rule is made absolute. No costs. Detenu Shri Pareshkumar Ramniklal Doshi be set at liberty forthwith if not required to be detained in any other case.

DIRECT SERVICE is permitted.

Copy of this common judgment be kept in Spl.C.A. No. 6168/2000.

25.8.2000 [C.K. BUCH, J]

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